



HOUSE BILL 1007: Amend Occ. Licensing Boards Statutes/Fees.

2016-2017 General Assembly

Committee: Senate Finance

Introduced by:

Analysis of: PCS to Third Edition
H1007-CSTQ-54 [v.8]

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SUMMARY: *The Proposed Committee Substitute (PCS) to H1007 would make several changes to the statutes governing occupational licensing boards generally, sunset certain occupational licensing boards effective October 1, 2019, and make various changes to several occupational licensing boards' statutes and fees.*

[As introduced, this bill was identical to S783, as introduced by Sen. Hartsell, which is currently in Senate Rules and Operations of the Senate.]

BACKGROUND: In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the US Supreme Court found that the NC Dental Board was not protected from antitrust actions under the doctrine of state action immunity because the Board was controlled by active market participants and was not subject to active supervision by the State.

CURRENT LAW AND BILL ANALYSIS:

Section 1 would amend the definition of "occupational licensing board" and create an exclusive list of all occupational licensing boards in the State.

Section 2 would require each occupational licensing board to electronically file an annual report with the Joint Legislative Administrative Procedure Oversight Committee (APO), the Department of Commerce, the State Auditor, the Office of State Budget and Management (OSBM), and the State Controller. This section would also direct OSBM to create a uniform form that each licensing board would use to complete the report. This section would also require that the report include:

- A list of all fees charged to applicants or licensees by the board and a comparison to equivalent fees charged by the analogous licensing boards in neighboring states, if applicable.
- A financial report containing the source and amount of all funds credited to the licensing board and the purpose and amount of all funds disbursed by the board during the previous fiscal year.
- The certification of a proper system of internal control and other financial information.
- A report of all civil penalties, forfeitures, and fines collected and remitted to the Civil Penalty and Forfeiture Fund.
- The statute or rule authorizing each fee collected, the amount of the fee, the date the fee was last changed, the number of times the fee was collected during the prior reporting period, and the total receipts resulting from the fee during the prior reporting period.

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- A financial audit of the board's operations if the board has a budget of at least \$50,000.

Section 3 would make a technical change.

Section 4 would require occupational licensing board members to receive training in Antitrust law and State action immunity as part of their required biennial training.

Section 5 would add several new sections to Chapter 93B as follows:

- G.S. 93B-17 would require occupational licensing boards to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.
- G.S. 93B-18 would clarify occupational licensing boards' authority to investigate unlicensed activity and to notify unlicensed persons of possible violations of laws and rules. This section would also provide standardized language for notifying unlicensed persons and entities of possible violations of the law. The notification would not indicate that the board has made a finding of a violation, but may indicate the board's belief or opinion that an unlicensed activity may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intent to pursue administrative remedies or court actions.

This section would also provide that if an occupational licensing board sues to enjoin a person from engaging in activities under the licensing board's scope of practice and the defendant prevails, the defendant will recover from the licensing board all reasonable expenses, including attorney's fees, incurred in defending the action. Further, if an occupational licensing board is sued by a private plaintiff for violation of any State or federal antitrust laws and the court rules against the occupational licensing board, the plaintiff will recover from the licensing board all reasonable expenses, including attorney's fees, incurred in maintaining the action.

- G.S. 93B-19 would provide the venue for an injunctive relief sought by an occupational licensing board is the superior court of the county where the defendant resides.
- G.S. 93B-20 would authorize an occupational licensing board to appear in its own name in actions for injunctive relief, authorizes the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been instituted. No board may issue orders independently of the superior court unless specifically authorized to do so by law.
- G.S. 93B-21 would encourage the resolution of jurisdictional disputes among occupational licensing boards by informal procedures, and would prevent licensing boards from commencing an administrative proceeding to resolve a jurisdictional dispute until each board has submitted its complaint in writing to APO and appeared before APO. If the dispute is still not resolved at that point, an affected board may file a petition with the Office of Administrative Hearings.

This section would become effective July 1, 2016, and applies to administrative proceedings commenced on or after that date.

- G.S. 93B-22 would require each occupational licensing board to implement a complaint process, with the requirements specified, and implement that process no later than January 1, 2017.
- G.S. 93B-23 would clarify that no occupational licensing boards may have any source of revenue other than statutorily authorized fees.
- G.S. 93B-24 would authorize an occupational licensing board to charge a five dollar (\$5.00) processing fee to any licensee who pays a license renewal fee by check.

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- G.S. 93B-25 would provide that an occupational licensing board may provide for licenses issued by the board to be valid for two years, and for licenses issued by the board to expire one calendar year after issuance of the license, rather than on a set date.

Sections 6, 7.(a), and 8 would amend other statutes requiring certain information be reported by providing that the report required by G.S. 93B-2 will satisfy that requirement. Section 7.(a) in particular would also require the OSBM to combine each occupational licensing board's annual report, in addition to the biennial fee report, into a single document. The OSBM would be required to submit the document to APO and the Fiscal Research Division no later than January 1 of each odd-numbered year.

Section 7.(b) would direct OSBM to establish and implement a uniform, standard accounting system for all occupational licensing boards no later than July 1, 2017.

Section 9.(a) would direct APO to continue to monitor and study the effects of the opinion in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of occupational licensing boards.

Section 9.(b) would direct APO to study the fee schedule of each occupational licensing board and develop legislative recommendations for a standard maximum fee schedule applicable to all occupational licensing boards.

Section 10 would sunset all occupational licensing boards that have fewer than 1,500 members as of July 1, 2016. The sunset would be effective October 1, 2019. Each affected board would be required to submit a dissolution and transfer plan to APO no later than November 1, 2017. The plan must include recommendations for:

- Whether and how the licensing requirements of the board should be transferred.
- The disposition or transfer of licensing fees and property held by the board.
- The fulfillment, dissolution, or transfer of contracts to which the board is a party.
- The resolution or transfer of any disciplinary or other administrative or legal actions to which the board is a party.
- How the board raises revenues to fund the board's overhead costs.
- Any other matters the board deems necessary.

This section would become effective October 1, 2016.

Section 11 would allow a school board to hire plumbing and heating contractors full-time to do repairs at schools, and would allow plumbing and heating contractors employed full-time by a local school board to contract or perform work during the hours the licensee is off duty from the regular employer.

This section would become effective October 1, 2016.

Section 12 would rewrite the provision related to licensure as a professional engineer to clarify the requirements. This section would also eliminate the requirement that the applicant must meet the education, experience and examination requirements in a particular order.

Further, this section would clarify the process for obtaining an engineer intern certificate and provides that an applicant for a professional engineer's license must meet stated requirements for education, examination, and experience. This section would retain the existing authority for licensure by comity, long-established practice, faculty members, and doctors of engineering.

Nothing in this section affects the law related to licensure of land surveyors.

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Section 13.(a) would limit the terms of the terms of a Medical Board member to two complete three-year terms in a lifetime.

Section 13.(b) would amend the qualifications for a physician, physician assistant, or nurse practitioner to add the requirement that the individual must not have served more than 72 months as a member of the Board.

Section 13.(c) is a technical change to capitalize "Review Panel."

Section 13.(d) would add new language to the law pertaining to recommending Board members to: (i) allow the Board to provide confidential and nonpublic licensing and investigative information to the Review Panel; (ii) to specify that all applications, records, papers, files, reports, investigative and licensing information received by the Review Panel as a result of soliciting, receiving and reviewing applications and making recommendations will not be considered public records; and (iii) to provide that the Review Panel is a public body within the meaning of Article 33C, Chapter 143, which establishes the policy of the state to conduct open hearings, deliberations, and actions, but specifies that the Review Panel will meet in closed session to review applications; interview applicants; review and discuss information; and to discuss, debate, and vote on recommendations from the Governor. The Review Panel would be required to publish on its Internet Web site the names and practice addresses of all applicants within 10 days after the application deadline and to publish the names and practice address of nominees recommended to the Governor within 10 days and not less than 30 days prior to the expiration of the open position on the Board.

Section 13.(e) would amend the law on the Board's requirement to collect and publish data by removing the requirement to report fax numbers, but does continue to require a current, active email address, which is considered a public record, and may be used or made available by the Board for the purpose of disseminating or soliciting information affecting public health or the practice of medicine.

Section 13.(f) would remove a reference to making fax numbers available.

Section 13.(g) would amend the law to specify that the Board must not deny an application for licensure based solely on the applicant's failure to become board certified.

Section 13.(h) would increase from \$350 to \$400, the application fee payable to the NC Medical Board for each applicant for a license to practice medicine and surgery in the State.

Section 13.(i) would increase from \$175 to \$250, the annual registration fee for every person licensed to practice medicine by the Board, except those who have a limited license to practice in a medical education and training program shall pay \$125, and those who have a retired limited volunteer license pay no annual registration fee. This section also removes duplicate language contained in two subsections. A subsection is added to provide that the Board must not deny a licensee's annual registration based solely on the licensee's failure to become board certified.

Section 13.(j) would amend the law on disciplinary authority of the Board to provide that if the licensee has retained counsel, the Board may serve to both the licensee and the licensee's counsel orders to produce, appear, submit to assessment or examination or orders following a hearing or provide notice that the Board will not be taking further action against a licensee.

Section 13.(k) would amend the law on disciplinary action pertaining to the written notice indicating charges made against the licensee to add a requirement that once charges have been issued, the parties may engage in discovery as provided in G.S. 1A-1, the North Carolina Rules of Civil Procedure. Additionally, the Board must provide the respondent or respondent's counsel with information obtained during an investigation, except for the following:

- 1) Information that is subject to attorney client privilege or is attorney work product.

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- 2) Information that would identify an anonymous complainant.
- 3) Information generated during an investigation that will not be offered into evidence by the Board and is related to: (i) advice, opinions, or recommendation of the Board staff, consultants, or agents; or (ii) deliberations by the Board and its committees during an investigation.

Section 13.(l) would amend the reporting requirements of disciplinary action by health care institutions to eliminate the requirement that hospitals report suspensions for delinquent medical records.

Section 13.(m) would rename Article 1D, "Health Program for Medical Professionals."

Section 13.(n) would amend the peer review agreement to provide that the Medical Board (Board) may enter into agreements with the NC Medical Society (Society), the NC Academy of Physician Assistants (Academy) and the NC Physicians Health Program (Program) to identify, review, and evaluate licensees of the Board, who have been referred to the Program, with regard to their ability to function in their professional capacity and to coordinate regimens for treatment and rehabilitation. The agreement must include guidelines for all items outlined below:

- 1) The assessment, referral, monitoring, support, and education of licensees of the Board by reason of a physical or mental illness, a substance use disorder, or professional sexual misconduct.
- 2) Procedures for the Board to refer licensees to the Program.
- 3) Criteria for the Program to report licensees to the Board.
- 4) A procedure by which licensees may obtain review of recommendations by the Program regarding assessment or treatment.
- 5) Periodic reporting of statistical information by the Program to the Board, the Society, and the Academy.
- 6) Maintaining the confidentiality of nonpublic information.

The Program is described as an independent organization for medical professionals that provides screening, referral, monitoring, education, and support services. The Board, Society, and the Academy may provide funds for administration of the Program.

The Program is required to report immediately to the Board detailed information about any licensee of the Board who meets any of the following criteria:

- 1) The licensee constitutes an imminent danger to patient care.
- 2) The licensee refuses to submit to an assessment as ordered by the Board, has entered into a monitoring contract and fails to comply with terms of the contract, or continues to be unsafe to practice medicine after treatment.

Any information acquired, created, or used in good faith by the Program under this health program is privileged, confidential, and not subject to discovery, subpoena, or other means of legal compulsion for release. No person participating in good faith in the Program can be required to disclose participation in a civil case. Activities conducted in good faith regarding to the agreements are not grounds for civil action.

Upon written request of a licensee, the Program must provide the licensee and the licensee's legal counsel with a copy of a written assessment of the licensee. The licensee is also entitled to a copy of any written assessment created by a treatment provider or facility at the recommendation of the Program, to the extent permitted by State and federal laws and regulations. Such information is limited in its use and availability.

The Board would be granted authority to adopt, amend, or repeal rules to enforce the provisions above.

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Section 13.(o) would repeal the requirement that the Board provide the licensee or applicant access to all information in its possession that the Board intends to offer into evidence in presenting its case at the contested hearing.

Section 13 would become effective October 1, 2016.

Section 14.(a) would increase the amount of time from 120 days to 180 days after employment for a chiropractic clinical assistant to obtain a certificate of competency from the State Board of Chiropractic Examiners (Board). A chiropractic clinical assistant is a nonlicensed employee of a chiropractic physician whose duties include (i) collecting general health data, such as the taking of an oral history or vital sign measurements, (ii) applying therapeutic procedures, such as thermal, sound, light and electrical modalities, and hydrotherapy, and (iii) monitoring prescribed rehabilitative activities. Chiropractic clinical assistants may not provide chiropractic adjustments, manual therapy, nutritional instruction, counseling, or any other therapeutic service that requires individual licensure.

Section 14.(b) would make a technical change.

Section 14.(c) would increase the maximum allowable fee from \$150 to \$180 that the Board may set as the annual renewal fee for a license to practice chiropractic in North Carolina.

Section 15 would create a new apprenticeship requirement option for opticians and a six-month intern requirement for licensure, and would lower apprenticeship requirements for licensure from 3.5 to 2.5 years. This section would also increase all of the Board's fees and create four new fees: registration of an optician in charge, late fee for restoration of an expired license within the first year after expiration, late fee for restoration of an expired license within the second year after expiration, and restoration fee for an inactive license within the second year. This section would also grant the State Board of Opticians with the authority to adopt rules concerning designation of accredited colleges, universities, and coursework that satisfy the qualifications for examination.

Section 16 would authorize the Real Estate Commission to increase the application fee for new licensees from \$30.00 to \$100.00 by rule, but may not increase the application fee by more than \$5.00 during a 12-month period. This section would also increase the board's license renewal fee from \$30.00 to \$45.00, and allow the Commission to increase the renewal fee from \$45.00 to \$60.00 by rule, but may not increase the application fee by more than \$5.00 during a 12-month period.

This section would become effective January 1, 2017.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

Amy Jo Johnson, Trina Griffin, Karen Cochrane-Brown, and Theresa Matula, Legislative Staff, substantially contributed to this summary.